

NOTICE: Summary decisions issued by the Appeals Court pursuant to its rule 1:28, as amended by 73 Mass. App. Ct. 1001 (2009), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

18-P-404

MAC HUDSON

vs.

LOIS RUSSO & others.¹

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

Plaintiff Mac Hudson, a prisoner who at that time was residing within the Special Management Unit (SMU) of the Massachusetts Correctional Institution at Concord (MCI-Concord), brought this action for declaratory, equitable relief, as well as money damages, challenging disciplinary procedures and conditions of confinement.² The complaint named as defendants certain officials of the Department of Correction working at MCI-Concord (DOC defendants) as well as individuals responsible for health care at that facility (health care defendants). The plaintiff appeals, arguing that the judge committed error in

¹ Erin Gaffeney, Keith Nano, Patricia Ruze, Theresa Smith, and Meaghan Dupois.

² Although the complaint named five additional plaintiffs, a judge had allowed the DOC defendants' motion dismissing those plaintiffs from the action.

allowing the motions for summary judgment and for sanctions, and in denying his posthearing motion to recuse. We affirm.

Motion to dismiss. The plaintiff's claims against the healthcare defendants arose out of the denial of a "bottom bunk pass" to accommodate his chronic lower back pain and alleged violations of the Americans with Disabilities Act, the Rehabilitation Act, and the cruel and unusual treatment provisions of the State and Federal constitutions. The healthcare defendants moved to dismiss on the basis that the allegations in the plaintiff's complaint failed to state a claim upon which relief could be granted.

On appeal, the plaintiff contends that the judge impermissibly converted the healthcare defendants' motion to dismiss into a motion for summary judgment by placing him under oath at the consolidated hearing,³ and thereby taking testimony and considering evidence outside the four corners of his complaint. His claims are without merit. The judge was considering the plaintiff's motion to amend the complaint (which was heard at the same time as the motion to dismiss) when he inquired of the other plaintiffs' signatures on the original complaint. Also, there is no indication that the judge had to

³ The consolidated hearing, held on May 23, 2017, addressed the plaintiff's motion to amend the complaint, the healthcare defendants' motion to dismiss, and the DOC defendants' motion for summary judgment.

resort to extrinsic evidence in order to consider the motion to dismiss.⁴ Our review of the healthcare defendants' motion indicates that it was based solely on the plaintiff's complaint and that it argued the plaintiff had failed to state a claim on which relief could be granted for the reasons stated in the accompanying memorandum of support. See Cruickshank v. MAPFRE U.S.A., 94 Mass. App. Ct. 662, 664 n.5 (2019) (appellate court may affirm judgment on any ground apparent in record that supports result reached by trial court judge).

Motion for summary judgment.⁵ The plaintiff contends that the judge erred in granting summary judgment because there were material facts in dispute. The disputed issues identified by the plaintiff are (1) whether the plaintiff had the ability to properly store trash or dispose of it more than once a week and whether the plaintiff filed a grievance regarding the trash issue; (2) whether the plaintiff was deprived of the ability to have his toiletries and books with him in the SMU; and

⁴ The judge did not rule on the healthcare defendants' motion to dismiss. Rather, the judge indicated that his rulings on the DOC defendants' motion for summary judgment "would apply with equal force on behalf of the [healthcare] defendants as well."

⁵ The plaintiff asserts that the DOC defendants' motion for summary judgment was addressed to his amended complaint even though his motion to amend the complaint was never allowed. As noted above, the motion to amend was heard at the same time as the motion for summary judgment. Our review of the DOC defendants' motion for summary judgment indicates that the motion was addressed to the plaintiff's original complaint.

(3) whether the plaintiff was deprived of a "Holy Quran" and a watch in the SMU.

Contrary to the plaintiff's position, these were not genuine issues of material fact in dispute. Rather, with respect to each claim, the DOC defendants argued that, taking the facts in the light most favorable to the plaintiff, he could not prevail because (1) he had no private right of action for regulatory violations, (2) his allegations did not amount to constitutional violations, and (3) he was no longer in the SMU and so could not maintain his claims for equitable or injunctive relief. We have reviewed the DOC defendants' memorandum of law in support of their motion for summary judgment, which was adopted by the judge, and conclude that, on the undisputed facts, the judge properly granted summary judgment in favor of the DOC defendants.

Motion for sanctions. The DOC defendants filed, after the consolidated hearing on May 23, 2017, but before decision, a motion for sanctions, requesting dismissal of the plaintiff's complaint. After receiving the plaintiff's opposition, the judge allowed the motion, dismissing the "entire" complaint. The plaintiff contends that the judge erred in ruling on the motion for sanctions without a hearing. Contrary to his claim, a motion for sanctions is not a dispositive motion that requires

a hearing under Rule 9 (A) (c) (3) of the Rules of the Superior Court. There was no error.

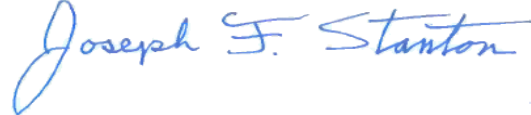
Posthearing motion to recuse. After the consolidated hearing on the motions May 23, 2017, but before decision, the plaintiff moved to recuse the judge who had heard those motions. The motion to recuse was based on the allegation that the judge was biased against the plaintiff, as evidenced by the judge taking on a prosecutorial role at the hearing by placing him under oath and, without warning, directly questioning him about the signatures of the other plaintiffs on the complaint. The plaintiff used, as a further example of bias, the judge's allowance of the DOC defendants' motion to file a document late while simultaneously denying the plaintiff's motion to file a document late.

On appeal, the plaintiff first argues that the motion to recuse should have been heard by another judge. However, a recusal motion is ordinarily addressed to the judge requested to be recused so that he may first make his own determination whether he is free from bias or prejudice, and then determine whether his impartiality could reasonably be questioned. See Correia v. Correia, 70 Mass. App. Ct. 811, 818 (2007). In ruling on the motion, the judge explained that the plaintiff was placed under oath at the hearing as was his usual practice in dealing with pro se litigants. Additionally, the judge's

questions regarding the other signatures on the complaint were relevant to the plaintiff's motion to amend the complaint, which sought in part to remove all of the other plaintiffs. As to the late-filed motions, the DOC defendants sought to file late a document they had already been given permission to file, while the plaintiff had not received advanced permission to file any additional documents. There was no abuse of discretion in the judge's denial of the motion to recuse. See Demoulas v. Demoulas Super Mkts., Inc., 428 Mass. 543, 546 (1998) (motion to recuse reviewed for abuse of discretion).

Judgment affirmed.

By the Court (Green, C.J.,
Meade & Singh, JJ.⁶),



Clerk

Entered: July 17, 2019.

⁶ The panelists are listed in order of seniority.